

California Regional Water Quality Control Board
North Coast Region

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R1-2002-0054A

FOR

VIOLATIONS OF
CALIFORNIA WATER CODE SECTION 13267(b)
ORDER ISSUED MARCH 14, 2002

WDID NO. 1B85026RHUM
NPDES NO. CA0024571

FAIRHAVEN POWER COMPANY

Humboldt County

**FAIRHAVEN POWER COMPANY, YOU ARE HEREBY GIVEN NOTICE
THAT:**

1. You are alleged to have violated provisions of law for which the Regional Water Quality Control Board, North Coast Region, (hereinafter Regional Board) may impose civil liability pursuant to California Water Code (CWC) Sections 13268 and 13323. As described further herein, the Regional Board Executive Officer proposes that administrative civil liability be imposed on you by the Regional Board in the amount of \$80,000.
2. Unless waived, a hearing on this matter will be held before the Regional Board within 90 days of the issuance of this complaint. You, or your representative, will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Regional Board. An agenda showing the time set for the hearing will be mailed to you not less than ten days before the hearing date.
3. At the hearing, the Regional Board will consider whether to affirm, reject, or modify the proposed civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

ALLEGATIONS

4. On December 5, 1996, the Regional Board adopted Waste Discharge Requirements Order 96-92, National Pollutant Discharge Elimination System

(NPDES) Permit No. CA0024571 (hereinafter Order 96-92), for the Fairhaven Power Company (hereinafter Discharger) power plant in Fairhaven, California.

5. Order 96-92 states that:

Fly ash from the dust collector and precipitator and bottom ash from the boiler are disposed at the City Garbage Company Landfill or used as a soil amendment on farmland. The total quantity of ash produced is 24 tons per day. Both fly ash and bottom ash are stored on-site in a controlled area during the winter period when it is not possible to place it on farmlands. During the winter, the ash is covered with plastic sheeting and contained by a concrete perimeter wall.

6. The Cummings Road Landfill is in the process of closing and stopped accepting waste as of June 16, 2000. Since that time, the Discharger has been stockpiling bottom ash in an unpaved area in the northwest corner of its property.
7. The Discharger dismantled the permitted fly ash storage area without obtaining prior approval from the Regional Board and has constructed an inferior fly ash storage area. The fly ash is not contained by the new perimeter and there is no cover to prevent windborne transport or rainfall infiltration.
8. The method of storage of bottom ash is considered a “waste pile” under Title 27 of the California Code of Regulations (27 CCR). Per 27 CCR, waste piles must have a liner precluding the leaching of the waste into the groundwater, and a cover that serves to minimize the quantity of leachate generated by shielding the waste from storm water.
9. The Regional Board informed the Discharger, in a letter dated July 26, 2001, that its method of handling bottom ash was unacceptable and that removal of the waste is necessary.
10. EnviroNet (the Discharger’s consultant), Lanahan & Reilly (the Discharger’s attorney), and Regional Board staff met on November 27, 2001, and agreed that a plan for bringing the ash waste management into compliance with 27 CCR would be submitted to the Regional Board by December 20, 2001.
11. EnviroNet submitted a report on January 9, 2002, more than two weeks after the deadline. A letter from Regional Board staff, dated February 27, 2002, informed the Discharger that the report failed to identify a feasible method of managing the bottom ash in a timely manner and was, therefore, unacceptable.
12. On March 14, 2002, the Regional Board Executive Officer issued an Order pursuant to Section 13267(b) of the California Water Code (CWC) requiring that a technical report be submitted to the Regional Board which would describe an acceptable short-term plan for storing and disposing of the fly ash and bottom ash

- generated at the Discharger's facility. The Order directed that the plan identify a way to bring the facility into compliance by June 15, 2002, and to keep the facility in compliance until a long-term plan could be developed and implemented. The Order specified that the report was due April 12, 2002.
13. SCS Engineers submitted a report on behalf of the Discharger on April 12, 2002. The report describes a "general approach" to managing the ash, and does not identify concrete steps that will be taken to bring the facility into compliance by June 15, 2002. The report stated that the specific approach would be submitted May 15, 2002.
 14. On April 18, 2002, EnviroNet met with Regional Board staff to discuss the report that was submitted. Regional Board staff informed EnviroNet that the submitted report was unacceptable.
 15. On May 2, 2002, the Executive Officer of the Regional Board issued Administrative Civil Liability Complaint No. R1-2002-0054 in the amount of \$19,000. Complaint No. R1-2002-0054 is hereby amended with this complaint.
 16. At the Discharger's request during a May 21, 2002, meeting, the hearing on the Complaint No. R1-2002-0054 was rescheduled from June 27, 2002, to August 22, 2002. The Discharger and Regional Board staff continued to meet and correspond between May and August, and the Regional Board hearing on the complaint was postponed indefinitely.
 17. The Regional Board received additional reports on July 12, 2002, July 22, 2002, and August 26, 2002, describing proposed ash management plans. These reports collectively constitute compliance with the 13267(b) Order on August 26, 2002. A new building will be constructed to house fly ash during winter months. Accumulated bottom ash will be used as structural fill under asphalt concrete paving in compliance with 27 CCR. Newly generated bottom ash will be disposed at an approved landfill until a long-term management plan is developed and approved.

PROPOSED CIVIL LIABILITY

18. Failure to submit a report required by a CWC 13267(b) Order, or submittal of an inadequate or late report, is a violation of CWC 13267 and is subject to administrative civil liabilities of up to \$1,000 per day of violation, as described in CWC 13268.
19. The total amount of civil liability accrued during the period April 13, 2002, through August 26, 2002, is \$135,000.

20. The Executive Officer of the Regional Board proposes that, in accordance with CWC Section 13268, the Regional Board impose \$80,000 in administrative civil liabilities on the Discharger for failure to timely submit an adequate report.
21. In a letter dated October 10, 2002, the Discharger proposed to pay \$80,000 in civil liability as full payment for all violations alleged in the Complaint. The Discharger will pay this amount as follows:
- a. The Discharger will pay \$27,000 in four installments of \$6,750 due on the following dates: April 30, 2003, May 31, 2003, June 30, 2003, and July 31, 2003.
 - b. The due date for the remaining \$53,000 will be deferred until either (1) Eel River Sawmills, Inc., successfully completes the first sale of sawmill assets¹ or (2) September 30, 2003, whichever occurs first.
 - c. Escrow instructions will be prepared instructing the appointed escrow agent to pay the State Water Resources Control Board \$53,000 in the manner set forth below upon the close of the first sale of sawmill assets.
 - d. In the event the first sale of sawmill assets does not close by September 30, 2003, the \$53,000 balance will be due and paid in three installment payments of \$17,666.67 each to be paid in the manner set forth below. These payments will be due on September 30, 2003, October 31, 2003, and December 1, 2003.
 - e. All payments shall be made by cashier's check to "State Water Resources Control Board." Checks shall be postmarked by the due date identified in the above paragraphs, and mailed to the following address:

SWRCB Accounting
Attn: Enforcement
P.O. Box 100
1001 I Street
Sacramento, CA 95812-0100

¹ A "sale of sawmill assets" is defined as the sale of one or more of the three sawmills (located at 1053 Northwestern Avenue, Fortuna, California; Highway 101, Redcrest, California; and Highway 36, Alton, California).

- f. A copy of each cashier's check shall also be mailed to the attention of "Accounting" at the Regional Board offices, which are currently located at the following address:

California Regional Water Quality Control Board
North Coast Region
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

WAIVER OF HEARING

22. You may waive the right to a hearing. If you choose to waive the hearing, please check and sign the enclosed waiver form and return it to the address listed above prior to the scheduled hearing. By signing the waiver form, Fairhaven Power Company agrees to pay the \$80,000 of civil liability as described in Paragraph 21 above.

Any waiver will not be effective until thirty days from the date of this Complaint to allow other interested persons to comment on this action. The Regional Board Executive Officer retains the authority to modify or reject the waiver based on comments received and reschedule the matter for a hearing before the Regional Board.

Susan A. Warner
Executive Officer

March 28, 2003